

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES ANDREW GUASCH,

No. C 10-5628 WHA

Petitioner,

ORDER TO SHOW CAUSE

vs.

MATTHEW CATES, in his capacity
as Secretary of the California
Department of Corrections and
Rehabilitation, and TERRI
GONZALEZ, in her capacity as
Warden, California Men's Colony at
San Luis Obispo, California,

Respondents.

Petitioner, a prisoner currently incarcerated in California, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 challenging a conviction in California state court.

According to the petition, in 2008 a jury in Santa Clara County Superior Court convicted petitioner of solicitation to commit murder, transportation and sale of a controlled substance, possession of a controlled substance for sale, and possession of a controlled substance. The trial court sentenced him to a term of twelve years and four months in state prison. The California Court of Appeal affirmed the conviction, and the California Supreme

1 Court denied review. Petitioner's state habeas petition was denied by both the Court of Appeal
2 and the Supreme Court.

3 A district court may entertain a petition for writ of habeas corpus "in behalf of a person
4 in custody pursuant to the judgment of a State court only on the ground that he is in custody in
5 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a).
6 Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512
7 U.S. 849, 856 (1994).

8 As grounds for federal habeas relief, petitioner claims that he was denied the following
9 rights: (1) his right to confront and cross-examine witnesses due to the trial court's prohibition
10 of certain cross-examination of the prosecution's primary witness; (2) his right to due process
11 of law due to the prosecution's failure to produce the terms of a plea bargain with an informant;
12 (3) his right to effective assistance of counsel due to his trial counsel's failure to make certain
13 objections; (4) his right to a fair trial due to the introduction of "propensity for violence"
14 evidence; (5) his right to confront and cross-examine witnesses and right to effective assistance
15 of counsel due to improper prosecution arguments concerning "propensity for violence"
16 evidence; and (6) constitutional violations due to cumulative errors at trial.

17 Liberally construed, these issues are sufficient to require a response.

18 1. The Clerk shall mail a copy of this order and the petition with all attachments to
19 respondents and the respondents' attorney, the Attorney General of the State of California. The
20 Clerk shall also serve a copy of this order on petitioner's counsel.

21 2. Respondents shall file with the Court and serve on petitioner, within **NINETY DAYS** of
22 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
23 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
24 granted based on the cognizable claims in the petition, as identified above. Respondents shall
25 file with the answer and serve on petitioner a copy of all portions of the state trial record that
26 have been transcribed previously and that are relevant to a determination of the issues presented
27 by the petition.
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1 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
2 Court and serving it on respondents within **THIRTY DAYS** of the date the answer is filed.

3 3. Respondents may file, within **NINETY DAYS**, a motion to dismiss on procedural
4 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
5 Rules Governing Section 2254 Cases. If respondents file such a motion, petitioner shall file
6 with the Court and serve on respondents an opposition or statement of nonopposition within
7 **THIRTY DAYS** of the date the motion is filed, and respondents shall file with the Court and serve
8 on petitioner a reply within **FIFTEEN DAYS** of the date any opposition is filed.

9 4. Petitioner is reminded that all communications with the Court must be served on
10 respondents by mailing a true copy of the document to respondents' counsel. Petitioner must
11 comply with court orders in a timely fashion. Failure to do so may result in the dismissal of this
12 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez*
13 *v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

14 **IT IS SO ORDERED.**

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16 Dated: December 21, 2010.

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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